IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5351 OF 2004

Bodhraj Maruti Lungase & Ors. ... Petitioners

Vs.

Chimabai Arjun Dhuman & Ors. ... Respondents

Mr. Surel S. Shah for the petitioners.

Mr. A.P. Kulkarni for respondent 1.

Mr. I.M. Khairadi for respondents 3, 4 and 5.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH MARCH, 2005.

P.C.:-

1. In this writ petition, order dated 29/1/2004 passed by the Second Additional District Judge, Solapur, on Civil Misc. Application No.139 of 1999 is challenged. The application was filed by original defendants 1, 2, 3 and 7 for condonation of delay in filing the appeal against the judgment and decree dated 23/4/1999 passed by the Joint Civil Judge, Junior Division, Mhada, in Regular Suit No.303 of 1993. It appears from the impugned order that there is 36 days' delay in filing the appeal. However, the learned counsel for the petitioners says that there is only 22 days' delay. The application is rejected on the ground that it cannot be said that the defendants did not have the knowledge of pending suit and

proceedings of hearing of the suit on various dates. It is observed that the petitioners have failed to show just, reasonable and good cause for condoning the delay.

2. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

3. Though the application was filed as far as back as on 29/6/1999, the same was disposed of by the court on 29/1/2004. The defendants ought to have moved the court earlier. While it may be true that the defendants have not prosecuted the suit with due diligence and care, in my opinion, interest of justice require that the lower appellate court should hear the appeal on merit. A direction needs to be given to the lower appellate court to hear and dispose of the instant appeal within a time frame. It appears that on 29/6/2004, Justice A.M. Khanwilkar had issued notice before admission to the respondents. However, the learned judge has observed that the petitioners should deposit a sum of Rs.6,000/- within three weeks from the date of the said order failing which the petition was to stand dismissed for non-prosecution without further reference to the court. It was further observed that if the petitioners deposit the costs, notices be issued to the respondents indicating that they will be entitled for costs of the proceedings equally between them, which are directed to

be deposited under the said order, on entering appearance before this court. I am informed that accordingly, the petitioners have deposited a sum of Rs.6,000/- in this court. In the facts and circumstances of the case, the petitioners will have to be directed to deposit additional amount of Rs.6,000/- as and by way of costs within a period of two weeks from today. Hence, I pass the following order.

4. The order dated 29/1/2004 passed by the Second Additional District Judge, Solapur, is set aside. The lower appellate court i.e. the District Judge, Solapur, is directed to hear and dispose of the appeal filed by the petitioners herein within a period of one month from the date of receipt of this order by him. It is clarified that this court has not expressed any opinion on the merits of the case. The petitioners should deposit an amount of Rs.6,000/- in this court within a period of two weeks from today. On such deposit being made, the original plaintiff will be entitled to withdraw the said amount. Needless to say that this shall be in addition to his share in the earlier amount of Rs.6,000/- deposited by the petitioners in pursuance of order dated 29/6/2004 passed by Justice A.M. Khanwilkar. Needless to say that till such time as the appeal is heard and finally deposited of, the status-quo order passed by Justice A.M. Khanwilkar to continue.

5. Parties to appear before the lower appellate court on 11/4/2005.

6. No fresh notice to the respondents is necessary in view of this order.

7. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)